

IN THE COURT OF CIVIL JUDGE-I (SR. DIV.), PIRO AT BHOJPUR

Title Suit No. 350 of 2003

Nandjee Singh & others Vs Lacho Singh @ Janaki Devi & others

S.L. No.	Date of Order of Proceedings	Order with signature of Court	Office action taken with date/ Remarks
	20.05.2025	Attendance through counsel filed on behalf of parties. A petition has been filed on behalf of the plaintiff under Order XVIII Rule 1 and under Section 151 of the C.P.C with a prayer that the defendants be ordered to adduce evidence. It has been submitted that this matter has been brought before this Court for the purpose of division/partition of disputed land on behalf of plaintiff. In this matter, defendants have filed their written statements. The issue has already been framed. Vide para no. 8 at the page no. 4, para no. 10 at the page no. 8 and page no. 8 of the written statement of the defendants, it has been stated that the partition between both the parties has been made with the due measurement. This suit is brought by the plaintiff for partition, so that if the partition has been done after measuring, then in that situation, the burden of proof shifts on the person who says that there has been a partition, i.e. the burden of proving the partition falls on the defendants. Defendant are insisting in his written statements that the partition suit has already been taken place. In this situation, the right to begin with the case in this partition suit lies with the defendant. The rejoinder has been filed on 22.04.2025 on behalf of defendant Lacho Devi @ Janki Devi with prayer to reject the petition dated 09.01.2025 on the ground that the petition filed on behalf of the plaintiff dated 09.01.2025 under Order XVIII Rule I under Section 151 C.P.C. is totally wrong and deserves to be rejected. The submission of the plaintiff is false and fabricated. Plaintiff has stated that the present case is about partition, which is completely wrong. The present case is not about the partition. The defendant Lacho Devi @ Janaki Devi is the wife of Lallan Singh and Lacho Devi's name is Janaki Devi @ Lacho Devi. Out of their wedlock two sons and a daughter was born, namely Pappu, Raju and Gudiya. The burden lies on the plaintiff to prove his case and on these grounds he prays for	
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continue..	rejecting the petition filed on behalf of plaintiff. Heard the learned counsel for the parties and perused the case record. From perusal of case record it appears that the plaintiffs have filed this suit <i>inter alia</i> with prayer to declare their share in Scheduled 1 and 2 of the plaint. From perusal of the record it appears that the plaintiff was directed to adduce evidence, but instead of complying with the direction the present petition was filed under Order XVIII Rule I of the C.P.C. Before proceeding further, it would be relevant to discuss the law the point. The provisions of Order XVIII Rule 1 of the CPC reads as under:- "The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin." As a general rule, according to the procedural law, no doubt it is the plaintiff who has to prove his claim by positive proof, for the court has to see whether there is a proof of claim before it needs to enquire, as to the truth or otherwise of the defence. It is open to the plaintiff to say that although he has the right to begin, yet he may rest content with relying upon the averments made in the written statement. Yet evidence need not always be led by the party who has the right to begin and on whom lies the burden of proof; it is open to him to sustain the onus by facts which he may elicit in cross examination of the other party or his witnesses. In order to come to the conclusion, concerning on whom the legal burden of proof rests, in addition to the substantive law, <u>the pleadings of the parties coupled with documents that they produced & the admissions, if any concerning such documents have to be taken into account.</u> The learned counsel for the plaintiff relied on 1999(3) PLJR but the same does not lay down any law and does not appear to be relevant. Section 101 of the Indian Evidence Act lays down the
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achieve and secure ends of justice." Thus, in the light of above discussions including Section 101 and 102 of Indian Evidence Act and the provisions of Order XVIII Rule 1 C.P. C., this Court does not find any substance in the petition filed on behalf of plaintiff as from perusal of defendant's pleading, their plea do not strike of the root of the case and thus a petition dated 09.01.2025 is hereby rejected for want of any merit.

Put up on 02-06-25 for
plaintiff's evidence.

(Bhupendra Nath Tripathi)

Civil Judge (Sr. Div.)I

Piro at Bhojpur

Date: 20.05.2025